

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHUCK KOUSSAN,

Defendant-Appellant.

UNPUBLISHED

May 13, 1997

No. 191091

Muskegon Circuit Court

LC No. 94-36797 FH, 90-

32440-1-FH & 90-32442 FC

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

The trial court's findings at the conclusion of the entrapment hearing are not clearly erroneous. On those facts, defendant was an established drug user and dealer, who simply took advantage of an available opportunity, unattended by sexual favors, sympathy, or other difficult-to-resist importuning by a close personal friend, or potential for inordinate profit, to commit those crimes. That is not entrapment. *People v Butler*, 444 Mich 965; 514 NW2d 772 (1994).

Imposition of consecutive sentences for the two substantive drug offenses and conspiracy was correct. *People v Denio*, 214 Mich App 647; 543 NW2d 66 (1995), addresses only multiple conspiracy offenses, for which no applicable statute authorizes consecutive sentencing. *Accord: People v Feazel*, 219 Mich App 618, 626-627; ___ NW2d ___ (1996) (multiple sentences for conspiracy must run concurrently with one another, but would properly be served consecutively to any sentence for a substantive controlled substance offense). This result is consistent with the principle that the terminology "another felony" in §7401(3) of the Public Health Code is clear, unambiguous, and unlimited. *People v Morris*, 450 Mich 316, 328-330; 537 NW2d 842 (1995).

The trial court did not abuse its discretion by failing to recognize its discretion to impose less than a 20-year sentence on the conspiracy charge, *People v Perez*, 417 Mich 1100.21; ___ NW2d ___ (1982), the court said nothing at sentencing suggesting it lacked such discretion. Rather, the court, having imposed some departure sentences, expressly declined to grant further leniency, and was not

* Circuit judge, sitting on the Court of Appeals by assignment.

required to state on the record its awareness of discretion concerning the maximum sentence. *People v Beneson*, 192 Mich App 469, 471; 481 NW2d 799 (1992). Faced with a defendant convicted of multiple offenses, the court's conclusion that, despite the presence of some mitigating factors, a departure sentence regarding the conspiracy charge was unwarranted, was not an abuse of discretion. *People v Fields*, 448 Mich 58; 528 NW2d 176 (1995).

Although the court initially indicated it thought defendant had been involved in drug dealing while a fugitive, defense counsel interjected a denial, the prosecutor acknowledged inability to confirm, and the court proceeded to articulate independent reasons for the sentence imposed. Even if there were error in this regard, in the face of the factual correction made during sentencing, resentencing on this basis would not be warranted. *People v Watroba*, 89 Mich App 718, 724-725; 282 NW2d 196 (1979). Where defendant absconded and his apprehension nearly three years later was the result of involuntary arrest in a foreign country and extradition, the sentences imposed were amply justified, do not represent an abuse of sentencing discretion, and are not disproportionate. *People v Merriweather*, 447 Mich 799; 527 NW2d 460 (1994).

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot